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JAMES H. McKENNEY,
Clerk.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1902.

ROBERT L. WINEBRENNER
vs.
EDWARD C. FORNEY. } No. 409.

Memorandum of Public Documents Referred to in Argument.

I.

Executive Document No. 27, 53d Congress, 1st Session, House of Representatives, showing:

1. At p. 3, order for use of troops in preventing ingress before time for entry fixed by the proclamation, and in giving effect to requirements of proclamation.

2. Pages 5 *et seq.*, 23, 27, 36 and 37, showing troops used to prevent entry from Indian Reservations.

3. Pages 21, 22, 78–9 and 80, showing runs prohibited from all reservations, that the hundred feet strip could not be laid off on the east side of the Outlet, etc.

II.

Senate Executive Document No. 56, 52nd Congress, 1st Session, showing treaty for cession of certain lands "described, commonly known as the Cherokee Outlet," defined by metes and bounds and also by acreage, both methods of description embracing and including the Indian Reservations. Page 13 shows that the Cherokees had theretofore ceded only a partial interest in the

Indian Reservations, and still retained an interest therein, which was recognized and paid for under the treaty, and that the said reservations were thus, in a tangible sense as well as in common parlance, still a part of the Cherokee Outlet. This executive document also contains, at pp. 20–27, the opinion of the Assistant Attorney General addressed to the Secretary of the Interior, referring, at p. 20, to the entire tract as "what is commonly known as the Cherokee Outlet," the opinion concluding, at p. 27, with the provision ultimately incorporated into Sec. 10 of the Act of March 3, 1893 (27 Stats. at Large, 640), disqualifying from entry any person entering upon "said lands" until they should be opened for settlement, which disqualification it is claimed the defendant in error incurred.

III.

Proclamation of the President opening the Outlet to settlement.

IV.

The opinion of Assistant Attorney-General Hall of August 28, 1892, addressed to the Secretary of the Interior, to the effect that it was the duty of the Secretary to prevent persons from going upon the Indian Reservation to make the "run" on the day of the opening. This opinion wil lbe found quoted in Cagle *v.* Mendenhall, 20 L. D., 447.

V.

Miscellaneous books, Land and Railroad Division, Land Office, Interior Department, showing numerous letters and telegrams from the Secretary and from the Land Commissioner, continuously from the date of the President's proclamation down to the date of the opening, announcing that entrance from the Ponca or any other Indian reservation would forfeit all right to settlement. These miscellaneous books,

we are advised, have not been printed so as to make it possible to file copies, but will be placed at the service of the Court by the Interior Department upon any request to that effect. Specimens of their contents are as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE ASSISTANT ATTORNEY-GENERAL,
WASHINGTON, *August 26, 1893.*

THE SECRETARY OF THE INTERIOR.

SIR: You request to know whether, in my opinion, you could issue permits to persons to go on the Cherokee Outlet before the day of opening for the purpose of establishing stores, lumber yards, etc. In reply I would say that I have no doubt about your authority to issue such permits. The inhibition found in the act of Congress, approved March 3, 1893, which relates to the opening of the Outlet and its settlement, and in the proclamation of the President is against persons entering contrary to the manner indicated in the act of Congress and by the proclamation for the purpose of settling on the lands in the Outlet and claiming homesteads thereon. If one should come on the Outlet contrary to the manner prescribed in the act of Congress and the proclamation of the President, the only punishment prescribed is that such persons "should forfeit all right to acquire any of said lands." This would indicate clearly that one might go upon the Outlet for any other purpose than entering a homestead; certainly it would be so if such person had the permit of the Secretary of the Interior.

Of course, if persons are permitted to go on the Outlet for the purpose of opening a store or establishing a lumber yard, or for any other purpose, they would be required to file with the proper officer a declaration stating that they would not claim the right to enter homesteads, directly or indirectly, nor aid any person in doing so.

I do not give any opinion as to the propriety and policy of permitting persons to enter on the Outlet for trading purposes before the day of opening, as I regard that a matter wholly within your discretion.

Very respectfully,

JOHN I. HALL,
Assistant Attorney General.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *August 28, 1893.*

Messrs. HARDING & RIDDELL,
Publishers, etc.,
Arkansas City, Kansas.

GENTLEMEN:

I am in receipt of your favor of the 25th inst., inquiring whether, "under the President's proclamation will settlers be allowed to make the run for claims from the Osage and Ponca Reservation?" That is, you wish to know whether it will be permissible for parties desiring to make homestead entries to go upon the Osage and Ponca Indian Reservations contiguous thereto, for the purpose of entering upon the Outlet at the appointed time. They will not be allowed to do so.

Respectfully,
HOKE SMITH, *Secretary.*

Respectfully submitted,
S. H. HARRIS,
Attorney for Appellant.

J. J. DARLINGTON,
Of Counsel.